**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

**ORDER**

**Manna Singh vs. State of Rajasthan & Ors.**

**(S.B.C.Writ Petition No.3674/98)**

Dated:- 8th September, 2006.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Mr.P.P.Choudhary, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy.Government Advocate for the respondents.
Mr.R.N.Updhayay, Advocate for respondent no. 3.

**REPORTABLE**

This writ petition has been filed by the petitioner Manna Singh Chauhan praying for writ of mandamus directing the respondents to appoint him on the post of Physical Teacher Gr.III with effect from the date when the respondent no. 3 and 4 were so appointed with all consequential benefits together with interest @ 24% per annum and further declaring that the respondent no. 3 was not entitled to 10% extra marks for his domicile certificate and respondent no. 4 was not entitled to 5% extra marks for his district level sports certificate. Accordingly, the respondents should deduct such marks from the total marks secured by them.

Since the appointment of respondent no. 4 Mitthu Singh has already been cancelled as a result of enquiry conducted by the

respondents following the judgment passed by this Court on 26.5.2005 in Ganesh Lal vs. State of Rajasthan(S.B.C.Writ Petition No. 1768/98) in which district level tournament certificate produced by him was found forged and consequently the weightage of 5% extra marks given to him was withdrawn and thus taking him out of the merit list. Question with regard to grant of extra weightage of 5% for his inclusion in the merit need not therefore be decided in the present writ petition.

The petitioner has to his credit the degree of B.A. and B.P.Ed.,which make him eligible for appointment on the post of Physical Teacher Gr.III. The respondents issued an advertisement on 19th April, 1997 inviting applications from eligible candidates for appointment of 22 posts of Physical Teacher Gr.III. As usual, the advertisement also stated that reservation shall be provided to candidates of various categories as per policy of the State Government. The petitioner also applied for appointment seeking reservation being an O.B.C. candidate. The criteria then made applicable was that the candidates who are resident of the same district shall be entitled to to an additional weightage of 10% of marks and also weightage of 5% of marks shall be given to the candidates having sports certificate of district level. With extra 10% marks added for domicile, the name of the petitioner was placed in the merit list and total marks were 68%. In the same merit however respondent no. 3 Ranjeet Singh was placed at serial no. 1 with his percentage of marks being 74.44% which obviously also included the weightage of 10% given to him for being domicile of district Rajsamand. The grievance of the petitioner is that respondent no. 3 Ranjeet Singh in fact is a resident of

village Barakhan of tehsil Beawar in district Ajmer and the names of his father and mother have been shown at serial no. 437 and 438 in part no. 128 of the voters list of that village issued in the year 1998. He however obtained a false domicile certificate showing himself to be resident of village Bali Jassi Khera of district Rajsamand only with a view to securing extra weightage of 10%. When the petitioner came to know about this, he submitted a representation to the District Collector, Rajsamand. The respondent no. 3 was not allowed to join his duties. If the weightage of 10% of marks given to respondent no. 3 Ranjeet Singh is withdrawn, he would be left with only 64.44% of marks in the merit list, which is far less than the petitioner's marks at 68%. Hence this writ petition.

Initially the respondents came out with a plea that appointment of the respondent no. 3 Ranjeet Singh was withheld on receipt of the complaint. An order to this effect was passed by the District Education Officer, Rajsamand on 25.3.1998. He later called upon respondent no. 3 Ranjeet Singh to clarify as to why he submitted the domicile certificate issued by the Sub Divisional Magistrate, Bheem, district Rajsamand while applying for appointment on the post of Physical Teacher Gr.III whereas when he applied for appointment on the same post under District Education Officer, Ajmer, he enclosed the domicile certificate issued by the Sub Divisional Magistrate, Beawar, district Ajmer in which he was certified to be a bona fide resident of district Ajmer. He was therefore required to clarify this anomaly by 3.11.2003 else ex-parte decision would be taken in the matter. Simultaneously, District Education Officer, Rajsamand by letter dated 15.10.2003 also required Sub

Divisional Magistrate of both the places to clarify the position. When respondent no. 3 appeared before the District Education Officer on 3.11.2003 he clarified that although he was a resident of Bally Jassikheda, district Rajsamand and that his father has already submitted an application on 7.7.1997 before the Sub Divisional Magistrate, Beawar for cancellation of his domicile certificate obtained from there. He produced a copy of such application dated 7.7.1997. The District Education Officer, Rajsamand sent one Shri Pradeep Kumar Kataria, L.D.C. in his office to Beawar for verification of this fact with a letter addressed to Sub Divisional Magistrate, Bewar. The reader of the Sub Divisional Magistrate, Beawar endorsed a report on such communication that the office of Assistant Collector was newly created at Beawar in April, 1994 and was later shifted to Masooda as Sub Divisional Headquarter. Records relating thereto were transferred to Masooda in June, 1994 which now falls in district Ajmer. Reader had to give this report because Presiding Officer was on leave. The Sub Divisional Officer, Bheem in his letter dated 7.11.2003 addressed to District Education Officer, Rajsamand however informed that the domicile certificate was issued to the petitioner on 4.2.1997 on the basis of certificate of residence given by Sarpanch of Gram Panchayat, Bally, Ration Card issued by Tehsildar, Bheem and caste certificate issued from Tehsildar, Bheem. It was thereafter that the District Education Officer, Rajsamand again by his letter dated 14.11.2003 requested the Sub Divisional Magistrate, Beawar to provide demanded information as to verification of the domicile certificate issued form his office. The respondents have also stated that even after withdrawal of appointments given to respondent no. 3 Ranjeet Singh and no. 4 Mithu

Singh, no relief can be granted to the petitioner because he stood at serial no. 20 in the merit list. The respondents have placed on record a list in which the name of the petitioner appears at serial no. 20 and sufficient number of O.B.C. candidates in this merit list were otherwise available and having secured more marks than the petitioner found their placement above him in the merit. It has been submitted that although 22 vancancies were advertised as anticipated and expected vacancies but in fact that was not the exact number of vacancies which actually became available. The fact was that only 10 vacant posts were available on which the appointment have already been made. Even otherwise life of the select list expired on 31.3.1998. It has therefore been prayed that the writ petition may be dismissed.

The respondent no. 3 whose appointment has been questioned by filing a separate reply, contended that quintessence of domicile is different from that of bona fide residence. While no one can be without domicile and no one can have two domiciles, a person can be resident of two places. According to the respondent no. 3, the residence on a given point of time is a physical fact and no volition is needed to establish it. Unlike in the case of a domicile of choice, animus manedi is not an essential requirement of residence. Any period of physical presence, however short, may constitute residence provided it is not transitory, fleeting or casual. A person is ordinarily residence in a country if his residence there is not casual or uncertain, but is in the ordinary course of his life. A man may be ordinarily resident or habitually resident in more than one place. While `ordinary residence' is the physical

residence in regard to which intention is irrelevant, except to show that the residence is not merely fleeting, `habitual residence' may denote a quality of endurance longer than ordinary residence, although duration, past or prospective, is only one of the many relevant factors, and there is no requirement of any particular minimum period. Residence must be voluntary. Education, business, profession, employment, health, family or merely love of the place are some of the reasons commonly regarded as sufficient for a choice of regular abode. It has been further submitted that father and mother of respondent no. 3 are residing in Ajmer district and are having their home there and are residing there for a period of 31 years but he has not received his early education in the schools located in that area. He had been visiting that place for the purpose of pursuing studies in higher class and meet his parents. It has been further averred that he was living with his grand mother in the ancestral joint hindu property for all the time and has studies in the school while residing at the place his grant mother upto 10th standard.

It is in this scenario the fact that a certificate of bona fide resident of one place was taken way back in the year 1994. He secured second certificate in the year 1997. First one was from the Ajmer district whereas the second one was from Rajsamand district as one can be bona fide resident of two places. Nevertheless once he realized that this may be construed illegal, his father took steps to have the first certificate of bona fide certificate cancelled. The respondent no. 3 has denied that he secured the appointment by forgery or mis-statement of fact. The first bona fide resident certificate dated 28.6.1994 was taken under the

impression that he should be bona fide resident of the place which is the bona fide resident of his parents namely mother and father . Second bona fide certificate was taken because he was actually living at Bally Jassi Kheda and had studied there upto Secondary level though he shifted for his higher education at Government Senior Secondary School, Barakhera, Tehsil Beawar because such education was not available at Bally Jassi Kheda. Reason given for this was that his father Kishore Singh was working as teacher in Education Department, Government of Rajasthan and in that connection he remained posted as teacher at Barakhan, Barakhera and Taragarh in Ajmer district all situated within a radius of 4-5 kms. His father also constructed a house at Bara Khera and settled there and so the petitioner continued to visit that place . The respondent no. 3 thus asserted that he had resided at village Bally Jassikheda with his grand mother and studied there upto 10th standard. Respondent no. 3 has clarified that he secured the domicile certificate from Sub Divisional Magistrate, Beawar on 28.6.1994 under the mistaken belief that because his father was residing at Bally Jassikheda and that while studying there he lived with him, he could be considered as domicile of that place also. Although, he went to Amravati in State of Maharashtra for further studies of the degree course of B.P.Ed. and thereafter post graduation degree of M.P.Ed.,where he studies for five years. The respondent no. 3 has therefore denied at all that it was a case of securing employment on the strength of forged certificate and has prayed that the writ petition may be dismissed.

Although the Hon'ble Supreme Court by an authoritative

pronouncement in Kailash Chand Sharma vs. State of Rajasthan, reported in (2002) 6 SCC p.562 while upholding the Full Bench decision of this Court in Deepak Kumar vs. State of Rajasthan, reported in (1999) 2 Raj.L.R., 692 held that award of bonus marks on the ground of domicile in a particular district or rural area thereof and such a provision contained in a government circular as discriminatory and ultra vires of Article 14 of the Constitution of India. Their Lordships however held that it would be proper to apply the Full Bench judgment prospectively i.e. from 18.11.1999, the date on which Full Bench judgment was delivered. It was therefore held that the appointment made upto 17.11.1999 need not be reopened and reconsidered. Although the appointment of the respondent no. 3 was originally made on 25.3.1998 and he was not allowed to join because there was some dispute with regard to his degree of B.P.Ed. He filed S.B.C.Writ Petition No. 1118/98 “Ranjeet Singh vs. State” which was allowed by this Court on 20.10.2000 holding that the B.P.Ed. degree obtained by him was a recognised degree. The respondent finally appointed him by order dated 25.9.2001, copy of which has been placed on record with his reply at Annex. R3/5. The appointment in the present case having been made earlier than the said date would therefore be saved hence necessity to decide the petition on merits.

I have heard Mr.P.P.Choudhary, learned counsel for the petitioner as also Mr.Rameshwar Dave, learned Dy.Government Advocate for the respondent and Mr.R.N.Updhayay, learned counsel for the respondent no. 3 and perused the record.

Mr.P.P.Choudhary, learned counsel for the petitioner has argued that one cannot be resident of two places and that while respondent no. 3 secured domicile certificate from Sub Divisional Magistrate, Beawar on 28.6.1994, he also secured another bona fide certificate from Sub Divisional Magistrate,Bheem. The respondent no. 3 according to him has committed fraud upon the State thereby dis-entitled himself to appointment or continuation in service. To buttress his argument, he has relied on a full Bench judgment of this Court in Dharmpal Singh & Ors. vs. State of Rajasthan & Ors. , reported in 2000(2) WLC(Raj) p.400 wherein suppression of facts with regard to pending investigation/trial or conviction on a criminal charge by candidates seeking appointment on the post of constable was held to dis-entitle them to appointment and further that even if they were later acquitted of such criminal charge, this would not condone or wash out consequence of such material suppression which by itself was held to be `moral turpitude' within the meaning of relevant Rules. Mr. Choudhary has also argued that the select list was required to be made use of by the respondent to the extent of advertised vacancies and when 22 vacancies were advertised, the respondents could not restrict appointments against just ten posts. If they decide not to fill up remaining 12 vacancies, they have to assign the reasons for not doing so whereas no valid reasons have either been placed before this Court nor do they exist anywhere on record. He in this connection has relied on the judgments of the Hon'ble Supreme Court in Asha Kaul(Mrs.) & Anr. vs. State of Jammu and Kashmir & Ors., reported in (1993) 2 SCC p.573 and Miss Neelima Shangla, Ph.D. vs. State of Haryana & Ors., reported in (1986) 4 SCC p.268. He has also relied on a

judgment of this Court for the same proposition in the case of Krishi Upaj Mandi Samiti,Jodhpur etc. vs. State of Rajasthan & Ors., reported in RLR 1982 p.762. He has submitted that because the petitioner has all along been agitating his grievance and timely approached this Court. Appointment of the respondent no. 3 was withheld to enquire about the status of his domicile and yet during the pendency of the writ petition on 27th October, 1998 he was appointed. He therefore argued that the plea raised by the respondent that the life of the select list expired is liable to be rejected. He in this connection relies on the judgment of the Hon'ble Supreme Court in Purushottam vs. Chairman, M.S.E.B. & Anr., reported in (1999) 6 S.C.C. p.49 and Brijendra Singh & Ors. vs. State & Ors, reported in 2005(3) R.D.C.(Raj.)(DB) p.397.

On the other hand, Mr.Rameshwar Dave, learned Dy.Government Advocate argued that so far as the appointment of the respondent no. 3 is concerned, he has clarified that his father had already applied on 7.7.1997 for cancellation of the bona fide certificate dated 28.6.1994 issued by the Sub Divisional Magistrate, Beawar and that further enquiry from S.D.M.Bheem revealed that his domicile certificate of district Rajsamand was issued on the basis of certificates given by Sarpanch of Gram Panchayat, Bally, Ration Card issued by Tehsildar, Bheem and caste certificate issued by Tehsildar, Bheem. Village Jassikheda . Mr.Rameshwar Dave further argued that even though the respondents have advertised 22 posts but in fact most of these were only anticipated vacancies, creation of which was expected by the respondents but they were in fact not created. Number of vacancies was thus

confined to only ten. All the posts now having already been filled, there were no more vacancies to make any further appointments. He argued that the life of the select list itself has come to an end on 31.3.1998 . In view of these facts, argument of the petitioner that reasons for not making appointment against the remaining vacancies have not been furnished is not acceptable. He has therefore argued that the writ petition may be dismissed.

Mr. R.N.Updhayay, learned counsel for respondent no. 3 has explained in detail the reasons which lead to his client securing first bona fide residence certificate on 28.6.1994 and thereafter second such certificate on 4.2.1997. He submitted that this was although no illegality but of course a bona fide mistake and his father had taken steps by applying to Sub Divisional Magistrate, Beawar to get his bona fide certificate of the first place cancelled. The respondent no. 3 remained with his grand mother and studied there up to 10th standard. In the circumstances it cannot be said that the claim of the respondent no. 3 of residence in district Rajsamand was completely unfounded. He further submits that apart from the dispute with regard to domicile of the respondent no. 3, his appointment was withheld because government created a doubt about recognition of his degree of B.P.Ed. . The respondent no. 3 had to file a writ petition before this Court and pursuant to the judgment passed by this Court in the writ petition, he has since been appointed . He argued that the petitioner has now completed more than five years in service and it would be too harsh to him if his appointment is now annulled for technical reasons although the fact is that

Balli Jassikhera is native place his father and his own where they have their ancestral house and the petitioner received his early education upto 10th standard .

I have considered the arguments advanced by the learned counsel for the parties and perused the record.

I would take up the second argument raised by the learned counsel for the petitioner first to decide as to whether action of the respondents in not making appointment against 22 posts which were advertised by them can be legally justified. The petitioner has asserted that the application for appointment against 22 vacancies were invited vide advertisement dated 19th April, 1997 and the respondents have not assigned any reasons as to why they made appointment of just ten candidates and kept the remaining twelve posts unfilled. Such an assertion made by the petitioner merits outright rejection in the face of the explanation offered by the respondent that although 22 posts were advertised because some of the vacancies were expected to be created and therefore were taken as anticipated vacancies but their creation did not materialise. It is common in the working of the government that while making determination of vacancies, even the anticipated vacancies are taken into account and process for selection thereagainst is also initiated. Every advertisement inviting applications for that matter contains a stipulation to the effect that number of vacancies may be decreased or increased. If the respondents have now come out with a plea that actual number of vacancies available with them was only ten and therefore the

appointments were restricted to just ten vacancies, their bona fides and correctness of the reasons stated by them cannot be doubted more particularly when the petitioner has not been able to produce any material to prove to the contrary. Various case laws cited by the petitioner on the question that in spite of the life of the select list having come to an end on 31.3.1998, right to appointment shall still survive cannot therefore be applied to the facts of the present case. It is trite law that mere selection does not vest any right in the candidate whose name has found place in the select list. Refusal of appointment by the respondents to the petitioner was not just based on expiry of the life of the select list but also for the reason for non-availability of vacant post. This argument of the petitioner is therefore rejected.

Now I come to the question whether in the facts of the present case, the conduct of the petitioner securing two domicile certificates for appointment on the post of Physical Teacher Gr.III under two districts namely Rajsamand and Ajmer was such as to dis-entitle him to appointment at any of the places. Facts which have come on record although proves that the respondent no. 3 initially secured a domicile certificate from Sub Divisional Magistrate, Beawar on 28.6.1994 and later he secured such similar certificate from Sub Divisional Magistrate, Bheem on 4.2.1997. But there has been no denial of the fact that the petitioner's ancestral house is situated at Bally Jassikhera where he studied up to 10$^{th}$ standard while residing with his grand mother. He had his name included in the Ration Card of the family, the resident certificate issued by Sarpanch of the Gram Panchayat of that village and caste certificate

issued by Tehsildar, Bheem. The respondent no. 3 has also satisfactorily explained as to on what basis he had secured earlier bona fide certificate from Sub Divisional Magistrate, Beawar on 28.6.1994. His father had through out his carrear of 31 years served at villages Barakhara, Taragarh and Barakhan, all of which are situated within a close distance from one another and had constructed a house at Barakhan. His father in fact submitted an application on 7.7.1997 to Sub Divisional Magistrate,Beawar for cancellation of the bona fide certificate issued by his office. There has been no denial to this fact even by the government before this Court. The argument of the learned counsel for the petitioner which he has sought to base on a Full Bench decision of this Court in Dharampal Singh vs. State of Rajasthan(supra) is that securing employment on the basis of domicile certificate of Rajsamand even when the petitioner had already earlier secured such similar certificate from Beawar should be considered suppression of material fact amounting to moral turpitude and therefore should dis-entitle him to appointment .The facts in the aforementioned case were entirely different. In that case, candidates had applied for appointment on the post of constable in civil police which are responsible for maintenance of law and order. There was a specified column no. 17 in the application form as to if the candidate was involved in a criminal case or was arrested in a criminal case or was convicted in a criminal case. Rule 15 of the Rajasthan Police Subordinate Service Rules, 1989 which came up for consideration of the Court in that case clearly provided that if a candidate is found guilty of suppression of material information, he may, in addition to rendering himself liable to criminal prosecution can either be de-barred permanently or for specified

period by government from employment under the government. On verification however it transpired that petitioners in that case were involved either in a criminal case or were facing trial. Some of them were arrested in connection with such criminal cases and had even been convicted. These candidates had completely suppressed this material information in their application form in spite of being pointedly required to state the correct facts. It was in that context that the Full Bench held that :-

> "13 Column no. 17 of the application form make it necessary for the applicant to furnish information om relation to his involvement in criminal case. In the light of Rule 15 of the Rules and Circular dated 29.4.1995, it is clear that in relation to recruitment as constable in the Police Department, which is a disciplined force, in order to judge suitability and desirability of a candidate for recruitment, such information is vital. From the information so furnished, it would be possible for the Appointing Authority to judge the suitability of a candidate. If the material information specifically required in column no. 17 of the form is not furnished or wrongly furnished to mislead the authorities, that would only show the mental make up or frame of mind of the candidate, who in case is appointed, will have onerous responsibilities and duties to perform in the public interest. The nature of duties, a police constable has to perform, include maintenance of law and order, conduct of investigations, protection of life and property of citizens etc. Such duties can be entrusted safely to disciplined and honest persons. A person who does not furnish the material information which if furnished goes against him, exhibits his dishonest intention or his nature and mental condition. The Appointing Authority could trust such a person to entrust onerous and responsible duties that too in the police department. Having regard to the plain language of Rule 15 and the consequences of suppression of information read with the Circular which says that willful suppressed of information adverse to candidate comes within the purview of moral turpitude, it cannot be said that information sought in Column no. 17 of the application form is not material."

The present one is entirely different case where the

petitioner has applied for appointment on the post of Physical Teacher Gr.III enclosing therewith the domicile certificate of district Rajsamand which was issued on the basis of the certificates given by Sarpanch of Gram Panchayat, Bally Jassikhera, Ration Card issued by Tehsildar, Bheem and caste certificate issued by Tehsildar, Bheem. He initially secured one domicile certificate from Sub Divisional Magistrate Beawar but thereafter another domicile certificate was secured from district Rajsamand. But his father later applied for cancellation of his earlier certificate on 7.7.1997. Although, securing another domicile certificate from Sub Divisional Magistrate, Bheem inspite of having secured such similar certificate from Beawar on 28.6.1994 may be termed an over jealous approach on the part of the respondent no. 3, it could not be established that certificate secured from the Rajsamand was completely unfounded because respondent no. 3 had an ancestral house at that place where he studied upto 10th standard while residing with his grand mother. Procuring initial domicile certificate from Sub Divisional Magistrate, Beawar then another domicile certificate from Sub Divisional Magistrate, Bheem appears to have been motivated by his desire to secure employment which is so difficult to get in these days. But the facts remains that when already respondent no. 3 has applied for cancellation of earlier certificate and on inquiry by the respondents it was proved that the certificate secured by him later was not completely unfounded and had some basis of his having routes in village Bally Jassikhera where he had his ancestral property and received earlier education while living with his grand mother, action of the respondent no. 3 cannot be taken at a level of concealment of fact so as to constitute moral turpitude to now

justify annulment of his appointment after he has already served the respondents for five years. Even otherwise, with appointments having been restricted to only ten and the petitioner's placement in merit being at serial No. 22, he cannot get appointment even after exclusion of the respondent no. 3 from the merit list.

In the result, I do not find any merit in the writ petition. The same is dismissed with no order as to costs.

**(MOHAMMAD RAFIQ),J.**